

DATED

20th November 2023

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE
TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND
AT LAND EASTLEIGH RAIL WORKS, CAMPBELL ROAD,
EASTLEIGH**

between

EASTLEIGH BOROUGH COUNCIL

and

HAMPSHIRE COUNTY COUNCIL

and

DIAGEO PENSION TRUST (PROPERTY CUSTODIAN) LIMITED

and

DIAGEO PENSION TRUST LIMITED

Head of Legal Services
Eastleigh Borough Council
Eastleigh House
Upper Market Street
EASTLEIGH
SO50 9YN

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THIS DEED is dated 20th November 2023

- (1) EASTLEIGH BOROUGH COUNCIL of Eastleigh House Upper Market Street Eastleigh Hampshire SO50 9YN (**Borough Council**)
- (2) HAMPSHIRE COUNTY COUNCIL of The Castle Winchester Hampshire SO23 8UJ (**County Council**)
- (3) DIAGEO PENSION TRUST (PROPERTY CUSTODIAN) LIMITED (Co. Reg. No. 07047231) whose registered office is at Lakeside Drive, Park Royal, London NW10 7HQ (as Trustee Custodian of the Diageo Pension Scheme) and DIAGEO PENSION TRUST LIMITED (Co. Reg. No. 01024205) whose registered office is at Lakeside Drive, Park Royal, London NW10 7HQ (as Trustee of the Diageo Pension Scheme) (**Owner**).

BACKGROUND

- (A) The Borough Council and the County Council are the local planning authorities for the purposes of the Act for the area in which the Property is situated.
- (B) The County Council is the Highway Authority and Education Authority for Hampshire.
- (C) The Owner is the freehold owner of the Property registered with title absolute with HM Land Registry under title number HP615430.
- (D) On 21 June 2021 the parties entered into the Original Agreement.
- (E) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.
- (F) This agreement is made under section 106A of the Act and is supplemental to the Original Agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Original Agreement: the agreement made under section 106 of the Act dated 21 June 2021 between the Owner, the Borough Council and the County Council.

Property: the land known as Eastleigh Rail Works, Campbell Road, Eastleigh, Hampshire SO50 5AD.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 The following new Clause 19 shall be inserted after Clause 18 of the Original Agreement:

“Section 73 permission

*19. If any application arising from the Planning Permission is made pursuant to Section 73 of the Act (a “**Section 73 Application**”) and a planning permission is granted pursuant to the Section 73 Application (the “**Section 73 Permission**”) in relation to the Development then with effect from the date that such permission is granted the definitions and the obligations in this Deed shall in addition to continuing to bind the Land in respect of the Planning Permission relate to and bind the Section 73 Permission and all subsequent Section 73 Permissions and the Land itself without any further act by the parties PROVIDED THAT nothing in this clause shall:*

19.1 Restrict the ability of the Owner to request a variation to the terms of this Deed in connection with the grant of any Section 73 Permission (which request the Council shall consider in light of all the circumstances); or

19.2 Fetter the discretion of the Council in determining or in relation to 19.2.2 only the Council and the County Council:

19.2.1 Any application(s) under section 73 of the Act; or

19.2.2 The appropriate nature and/ or quantum of section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed

*pursuant to section 106 of the Act or a modification agreement
pursuant to section 106A of the Act."*

- 3.2 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS TO THE BOROUGH COUNCIL AND THE COUNTY COUNCIL

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

6. COUNCIL'S AND COUNTY COUNCIL'S COSTS

The Owner shall pay to the Borough Council and the County Council on or before the date of completion of this deed, the Borough Council's and County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

7. VALUE ADDED TAX

- 7.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

8. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

9. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims)

shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

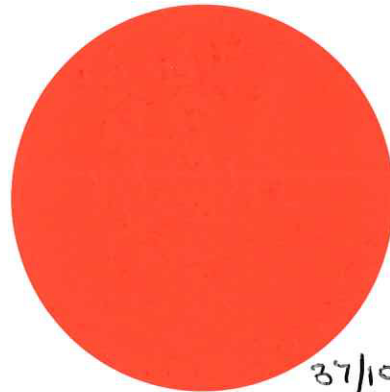
EXECUTED as a DEED by affixing)
THE COMMON SEAL of EASTLEIGH)
BOROUGH COUNCIL in the)
presence of:



[Redacted signature]

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EXECUTED as a DEED by affixing)
THE COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL in the presence of:)



37/101206

Authorised Signatory

Name

Position

[Redacted signature]

EXECUTED as a DEED by [Redacted signature])
on behalf of DIAGEO PENSION TRUST [Redacted signature])
(PROPERTY CUSTODIAN) LIMITED
Pursuant to a Power of Attorney dated [Redacted signature])
[Redacted signature] in the presence of: [Redacted signature])

Witness Signature

Witness Name

Witness address

[Redacted witness details]

EXECUTED as a DEED by

on behalf of DIAGEO PENSION TRUST
LIMITED pursuant to a Power of Attorney
dated [REDACTED] in the presence of:

Witness Signature

Witness Name

Witness address